

Penal Procedure

Form A

PETITION FOR POST-CONVICTION RELIEF

(Rule 40, HRPP)

Name_____

Prison Number _____

Place of Confinement _____

SPP No. _____ (to be supplied by Clerk of the Court)

_____ ,)

(full name of petitioner))

Petitioner,)

V.

STATE OF HAWAII,)

Respondent.)

**PETITION TO VACATE, SET ASIDE, OR CORRECT JUDGMENT
OR TO RELEASE PETITIONER FROM CUSTODY**

- (1) This petition must be legibly handprinted or typewritten, and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the **facts** which you rely upon to support your grounds for relief. If briefs or arguments or citation of authorities are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt, your petition will be filed if it is in proper order. No fee is required with this petition.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a petition of this type, you may request permission to proceed *in forma pauperis* in which event you must execute the declaration (Form B), setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court and judge may be challenged in a single petition. If you seek to challenge judgments entered by different judges or divisions either in the same court or in different courts, you must file separate petitions as to each such judgment.

- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the **original and two copies** must be mailed to the Clerk of the Court in which the conviction was entered whose address is

_____ [to be stamped in by the Clerk] _____

- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency, and will not be processed or considered until the deficiency is cured.
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PETITION

1. Name and location of court which entered the judgment of conviction under attack

(a) Case No. _____

(b) Trial Judge _____

2. Date of judgment of conviction _____

3. Length of sentence _____

4. Nature of offense involved (all counts) _____

5. What was your plea? (Check one)

(a) Not guilty _____

(b) Guilty _____

(c) Nolo Contendere _____

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. Kind of trial: (Check one)

(a) Jury _____

(b) Judge only _____

7. Did you testify at the trial?

Yes _____ No _____

8. Did you appeal from the judgment of conviction?

Yes _____ No _____

9. If you did appeal, answer the following:

(a) Supreme Court No. _____

(b) Result _____

(c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court?

Yes _____ No _____

11. If your answer to 10 is "yes," give the following information:

- (a) (1) Name of court _____
 (2) Case No. _____
 (3) Name of judge _____
 (4) Nature of proceeding _____

(5) Grounds raised _____

- (6) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No _____

(7) Result _____

(8) Date of result _____

- (b) As to any second petition, application or motion give the same information:

- (1) Name of court _____
 (2) Case No. _____
 (3) Name of judge _____
 (4) Nature of proceeding _____

(5) Grounds raised _____

- (6) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No _____

(7) Result _____

(8) Date of result _____

- (c) As to any third petition, application or motion give the same information:

- (1) Name of court _____
 (2) Case No. _____
 (3) Name of judge _____
 (4) Nature of proceeding _____

(5) Grounds raised _____

- (6) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No _____

(7) Result _____

(8) Date of result _____

(d) Did you appeal, to the Supreme Court of Hawai`i, the result of action taken on any petition, application or motion?

(1) First petition, etc.

Yes _____ (Supreme Court No. _____)

No _____

(2) Second petition, etc.

Yes _____ (Supreme Court No. _____)

No _____

(3) Third petition, etc.

Yes _____ (Supreme Court No. _____)

No _____

(e) If you did **not** appeal from the adverse action on any petition, application or motion, explain briefly why you did not.

12. State **concisely** every ground on which you claim that you are being held unlawfully. Summarize **briefly** the facts supporting each ground. If necessary, you may attach pages stating additional grounds and **facts** supporting same.

CAUTION: If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, **you should raise in this petition all available grounds** (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence obtained pursuant to an unconstitutional search and seizure.

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by a violation of the privilege against self-incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.

(i) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

A. Ground one:

Supporting FACTS (tell your story **briefly** without citing cases or law):

B. Ground two:

Supporting FACTS (tell your story **briefly** without citing cases or law):

C. Ground three:

Supporting FACTS (tell your story **briefly** without citing cases or law):

D. Ground four:

Supporting FACTS (tell your story **briefly** without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state **briefly** what grounds were not so presented, and give your reasons for not presenting them:

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes _____ If so, give court names(s) and case numbers.

No _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgments attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____

- (e) On appeal _____
- (f) In any post-conviction proceeding _____
- (g) On appeal from any adverse ruling in a post-conviction proceeding _____
16. Were you sentenced on more than one count of a charge or an indictment, or on more than one charge or indictment, in the same court and at approximately the same time?
Yes _____ No _____
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes _____ No _____
- (a) If so, give the case number and the name and location of court which imposed sentence to be served in the future: _____
- (b) And give date and length of sentence to be served in the future: _____
- (c) Have you filed, or do you contemplate filing any petition attacking the judgment which imposed the sentence to be served in the future?
Yes _____ No _____

Wherefore, petitioner prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Petitioner

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____.
(date)

Signature of Petitioner